



## Model Rule on Client Identification and Verification

Adopted by the Council of the Federation of Law Societies of Canada March 20, 2008; amended December 12, 2008; amended October 19, 2018.

### Definitions

1. In this rule,

“**credit union central**” means a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial or territorial Act other than one enacted by the legislature of Quebec.

“**disbursements**” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;

“**electronic funds transfer**” means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the **Financial Action Task Force**, where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities.

“**expenses**” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

“**financial institution**” means

- (a) a bank that is regulated by the *Bank Act*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,
- (c) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a financial services cooperative,
- (f) a credit union central,
- (g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
- (h) a trust company or loan company that is regulated by a provincial or territorial Act;

- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public; or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

**“financial services cooperative”** means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.

**“funds”** means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or right to or interest in them;

**“lawyer”** means, in the Province of Quebec, an advocate or a notary and, in any other province or territory, a barrister or solicitor;

**“organization”** means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

**“professional fees”** means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;

**“public body” means**

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them,
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act* (Ontario) [or equivalent legislation] or similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose, or
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

**“reporting issuer”** means an organization that is a reporting issuer within the meaning of the securities laws of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force, and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation.

**“securities dealer”** means persons and entities authorized under provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity.

### **Requirement to Identify Client**

2. (1) Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule in keeping with the lawyer’s obligation to know their client, understand the client’s financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.
- (2) A lawyer’s responsibilities under this Rule may be fulfilled by any member, associate or employee of the lawyer’s firm, wherever located.
- (3) Sections 3 through 10 do not apply to:
  - (a) a lawyer when he or she provides legal services or engages in or gives instructions in respect of any of the activities described in section 4 on behalf of his or her employer;
  - (b) a lawyer
    - (i) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or
    - (ii) to whom a matter for the provision of legal services is referred by the lawyer for a client, when the client’s lawyer has complied with sections 3 through 10, or,
  - (c) a lawyer providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the lawyer engages in or gives instructions in respect of the receiving, paying or transferring of funds other than an electronic funds transfer.
3. A lawyer who is retained by a client as described in subsection 2(1) must obtain and record, with the applicable date, the following information:
  - (1) for individuals:
    - (a) the client’s full name,
    - (b) the client’s home address and home telephone number,
    - (c) the client’s occupation or occupations, and
    - (d) the address and telephone number of the client’s place of work or employment, where applicable;

(2) for organizations:

- (a) the client's full name, business address and business telephone number,
- (b) other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
- (c) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
- (d) the name and position of and contact information for the individual who is authorized to provide and gives instructions to the lawyer with respect to the matter for which the lawyer is retained.

(3) if the client is acting for or representing a third party, information about the third party as set out in subsections (1) or (2) as applicable.

### **When Verification of Client Identity Required**

4. Subject to section 5, section 6 applies where a lawyer who has been retained by a client to provide legal services engages in or gives instructions in respect of the receiving, paying or transferring of funds.

### **Exemptions re: certain funds**

5. Section 6 does not apply

- (1) where the client is a financial institution, public body or reporting issuer,
- (2) in respect of funds,
  - (a) paid by or to a financial institution, public body or a reporting issuer;
  - (b) received by a lawyer from the trust account of another lawyer;
  - (c) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
  - (d) paid or received to pay a fine, penalty, or bail; or
  - (e) paid or received for professional fees, disbursements, or expenses;
- (3) to an electronic funds transfer.

### **Requirement to Verify Client Identity**

- 6. (1) When a lawyer is engaged in or gives instructions in respect of any of the activities described in section 4, the lawyer must
  - (a) obtain from the client and record, with the applicable date, information about the source of funds described in section 4, and
  - (b) verify the identity of the client, including the individual(s) described in paragraph 3(2)(d), and, where appropriate, the third party using the documents or information described in subsection (6).

### **Use of Agent**

- (2) A lawyer may rely on an agent to obtain the information described in subsection (6) to verify the identity of an individual client, third party or individual described in paragraph 3(2)(d) provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subsection (4).
- (3) Notwithstanding subsection (2), where an individual client, third party or individual described in paragraph 3(2)(d) is not physically present in Canada, a lawyer must rely on an agent to obtain the information described in subsection (4) to verify the person's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subsection (4).

### **Agreement for use of Agent**

- (4) A lawyer who enters into an agreement or arrangement referred to in subsection (2) or (3) must:
  - (a) obtain from the agent the information obtained by the agent under that agreement or arrangement; and
  - (b) satisfy themselves that the information is valid and current and that the agent verified identity in accordance with subsection (6).
- (5) A lawyer may rely on the agent's previous verification of an individual client, third party or an individual described in paragraph 3(2)(d) if the agent was, at the time they verified the identity,
  - (a) acting in their own capacity, whether or not they were required to verify identity under this Rule, or
  - (b) acting as an agent under an agreement or arrangement in writing, entered into with another lawyer who is required to verify identity under this Rule, for the purpose of verifying identity under subsection (6).

### **Documents and information for verification**

- (6) For the purposes of paragraph (1)(b), the client's identity must be verified by referring to the following documents, which must be valid, original and current, or the following information, which must be valid and current, and which must not include an electronic image of a document:
  - (a) if the client or third party is an individual,
    - (i) an identification document containing the individual's name and photograph that is issued by the federal government, a provincial or territorial government or a foreign government, other than a municipal government, that is used in the presence of the individual to verify that the name and photograph are those of the individual;

- (ii) information that is in the individual's credit file if that file is located in Canada and has been in existence for at least three years that is used to verify that the name, address and date of birth in the credit file are those of the individual;
- (iii) any two of the following with respect to the individual:
  - (A) Information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual;
  - (B) Information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual, or
  - (C) Information that contains the individual's name and confirms that they have a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information.
- (b) For the purposes of clauses (6)(a)(iii)(A) to (C), the information referred to must be from different sources, and the individual, lawyer and agent cannot be a source.
- (c) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of one of their parents or their guardian.
- (d) To verify the identity of an individual who is at least 12 years of age but not more than 15 years of age, the lawyer may refer to information under clause (6)(a)iii(A) that contains the name and address of one of the individual's parents or their guardian and verifying that the address is that of the individual.
- (e) if the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors, where applicable, such as
  - (i) a certificate of corporate status issued by a public body,
  - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
  - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence; and
- (f) if the client or third party is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constituting documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

## **Requirement to Identify Directors, Shareholders and Owners**

- (7) When a lawyer is engaged in or gives instructions in respect of any of the activities in section 4 for a client or third party that is an organization referred to in paragraph (6)(e) or (f), the lawyer must:
- (a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer; and
  - (b) make reasonable efforts to obtain, and if obtained, record with the applicable date,
    - (i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,
    - (ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and
    - (iii) in all cases, information establishing the ownership, control and structure of the organization.
- (8) A lawyer must take reasonable measures to confirm the accuracy of the information obtained under subsection (7).
- (9) A lawyer must keep a record, with the applicable date(s), that sets out the information obtained and the measures taken to confirm the accuracy of that information.
- (10) If a lawyer is not able to obtain the information referred to in subsection (7) or to confirm the accuracy of that information in accordance with subsection (8), the lawyer must
- (a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization;
  - (b) determine whether
    - (i) the client's information in respect of their activities,
    - (ii) the client's information in respect of the source of the funds described in section 4, and
    - (iii) the client's instructions in respect of the transaction, are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule;
  - (c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and
  - (d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).

### **Timing of Verification for Individuals**

- (11) A lawyer must verify the identity of
- (a) a client who is an individual, and
  - (b) the individual(s) authorized to provide and giving instructions on behalf of an organization with respect to the matter for which the lawyer is retained
- upon engaging in or giving instructions in respect of any of the activities described in section 4.
- (12) Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

### **Timing of Verification for Organizations**

- (13) A lawyer must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in section 4, but in any event no later than 30 days thereafter.
- (14) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subsection (7), the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

### **Record Keeping and Retention**

7. (1) A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of subsection 6(1).
- (2) The documents referred to in subsection (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.
- (3) A lawyer must retain a record of the information, with the applicable date, and any documents obtained for the purposes of section 3, subsection 6(7) and subsection 10(2) and copies of all documents received for the purposes of subsection 6(1) for the longer of
- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing service to the client, and
  - (b) a period of at least six years following completion of the work for which the lawyer was retained.

### **Application**

8. Sections 2 through 7 of this Rule do not apply to matters in respect of which a lawyer was retained before this Rule comes into force but they do apply to all matters for which he or she is retained after that time regardless of whether the client is a new or existing client.



### **Criminal activity, duty to withdraw at time of taking information**

9. (1) If in the course of obtaining the information and taking the steps required in section 3 and subsections 6(1), (7) or (10), a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.
- (2) This section applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Rule comes into force.

### **Monitoring**

10. During a retainer with a client in which the lawyer is engaged in or gives instructions in respect of any of the activities described in section 4, the lawyer must:
- (1) monitor on a periodic basis the professional business relationship with the client for the purposes of:
- (a) determining whether
- (i) the client's information in respect of their activities,
- (ii) the client's information in respect of the source of the funds described in section 4, and
- (iii) the client's instructions in respect of transactions are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule, and
- (b) assessing whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and
- (2) keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of paragraph (1)(a) above.

### **Duty to withdraw**

11. (1) If while retained by a client, including when taking the steps required in section 10, a lawyer knows or ought to know that he or she is or would be assisting the client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.

### **Application**

- (2) This section applies to all matters for which a lawyer was retained before this Rule comes into force and to all matters for which he or she is retained after that time.